

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELLIOT MCGUCKEN,

Plaintiff,

v.

SHUTTERSTOCK, INC., et al.,

Defendants.

Civil Action No.: 1:22-cv-00905-JHR

DECLARATION OF SCOTT ALAN BURROUGHS, ESQ.

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I, Scott Alan Burroughs, hereby declare as follows:

1. I am above eighteen (18) years of age and am competent to give the testimony set forth below. Said testimony is given from my own personal knowledge. I make this declaration in opposition to Defendant Shutterstock, Inc.'s ("Shutterstock") Motion for Summary Judgment. If called as a witness, I could and would competently testify as set forth below.
2. I am a member of the New York Bar and am a shareholder at the law firm Doniger / Burroughs. I am lead counsel for Plaintiff, Dr. Elliot McGucken ("McGucken"), in this action.
3. I have attached hereto as **Exhibit 7** a true and correct copy of Shutterstock documents relating to its licensing practices.
4. I have attached hereto as **Exhibit 38** a true and correct copy of relevant portions of Shutterstock corporate designee Heather Shimmin's deposition transcript.
5. I have attached hereto as **Exhibit 8** a true and correct copy of Shutterstock documents reflecting its pricing.
6. I have attached hereto as **Exhibit 9** a true and correct copy of Shutterstock's 2018 Annual Report.
7. I have attached hereto as **Exhibit 10** a true and correct copy of Shutterstock's Form S-1 government filing. I have attached hereto as **Exhibit 33** a true and correct copy of Shutterstock's 10-K government filing
8. I have attached hereto as **Exhibit 11** true and correct copies of documents reflecting Shutterstock's business model.
9. I have attached hereto as **Exhibit 12** a true and correct copy of Shutterstock's content

review documentation.

10. I have attached hereto as **Exhibit 13** a true and correct copy of evidence reflecting Shutterstock's directions and guidance for contributors and as **Exhibit 14** a true and correct copy of Shutterstock's contributor success guide.
11. I have attached hereto as **Exhibit 15** true and correct copies of documents reflecting the Shutterstock user experience.
12. I have attached hereto as **Exhibit 16** a true and correct copy of Shutterstock's Terms of Service.
13. I have attached hereto as **Exhibit 17** a true and correct copy of *representative exemplars* of licenses sold by Shutterstock to licensees allowing for exploitation of McGucken's photography.
14. I have attached hereto as **Exhibit 19** a true and correct copy of *representative exemplars* of the EXIF data and/or metadata that Shutterstock received with the Subject Photography previously produced by Shutterstock as STK005248. I have attached as **Exhibit 20** a true and correct copy of documents reflecting a *representative exemplar* of Shutterstock's display and marketing of McGucken's photography.
15. I have attached hereto as **Exhibit 21** a true and correct copy of Shutterstock's licensing data for the Infringing Copies.
16. I have attached hereto as **Exhibit 22** true and correct copies of documents reflecting infringement by, and correspondence with, Shutterstock's licensees for the Infringing Copies.
17. I have attached hereto as **Exhibit 23** a true and correct copy of correspondence between Shutterstock and its licensees for the Infringing copies.

18. I have attached hereto as **Exhibit 17** a true and correct copy of correspondence between Shutterstock and certain of its licensees for the Infringing Copies.
19. I have attached as Exhibits **24, 25, 26** true and correct copies of displays of the Infringing Copies on these sites. I have attached as **Exhibit 27** true and correct copies of the agreement between Shutterstock and TinEye.
20. I have attached hereto as **Exhibit 28** a true and correct copy of Shutterstock's API terms and conditions.
21. Shutterstock also knew that its "Hane Street" contributor, with whom Shutterstock worked to offer most of the Infringing Copies, was an infringer as early as March 2020, when it was alleged to be responsible for the photography at issue in *Itasca Images, LLC et al v. Shutterstock, Inc., et al*, 0-21-cv-00287 (D.MN). I have attached hereto as **Exhibit 18** a true and correct copy of correspondence sent by Itasca Images, LLC to Shutterstock.
22. I have attached hereto as **Exhibit 40** a true and correct copy of a notice sent by a third party to Shutterstock advising it that it was committing copyright infringement.
23. Shutterstock has been charged with copyright infringement in *at least nine* cases since 2019.¹ Shutterstock has also received no fewer than 260 complaints to the Better Business Bureau. I have attached hereto as **Exhibit 35** a true and correct copy of Better Business Bureau complaints.
24. I have attached hereto as **Exhibit 36** a true and correct copy of an article about Shutterstock and as **Exhibit 37** true and correct copies of documents reflecting a forum discussion about Shutterstock.

¹ See *Tamara Williams v. Shutterstock, Inc., et al*; 1-21-cv-05784 (E.D.N.Y.); *Steinmetz v. Shutterstock, Inc., et al*, 1:21-cv-07100 (S.D.N.Y.); *Cavanaugh v. Shutterstock, Inc., et al*, 1-21-cv-03796 (S.D.N.Y.); *Itasca Images, LLC et al v. Shutterstock, Inc., et al*, 0-21-cv-00287 (D.MN); *Lickerish, Ltd. v. Shutterstock Inc.*, 1-20-cv-05384 (S.D.N.Y.); *Penske Media Corporation v. Shutterstock, Inc.*, 1-20-cv-04583 (S.D.N.Y.); *Grossman Enterprises LLC v. Hubbard Broadcasting, Inc., et al.*, 1-20-cv-03023 (S.D.N.Y.); *Michael Grecco Productions, Inc. v. Rex Features, Ltd., et al.*, 2-20-cv-00787 (C.D.CA); *Michael Grecco Productions, Inc. v. Shutterstock, Inc., et al.*, 2-19-cv-01153 (C.D.CA).

25. I have attached hereto as **Exhibit 41** a true and correct copy of the email notices that Shutterstock sent to its licensees.

26. I have attached as **Exhibit 34** a true and correct copy of a document announcing Shutterstocks' purchase of HelloRF parent company, Zcool.

27. I have attached as **Exhibit 43** a true and correct copy of a Shutterstock document reflecting its review of the "Hane Street" account.

28. I have attached as **Exhibit 44** true and correct copies of representative Shutterstock documents their removal of the Infringing Copies in or around May of 2021 or as late as May of 2022.

29. I have attached as **Exhibit 45** a true and correct copy of a Shutterstock document reflecting its review of the "Raza 76J" account.

30. I have attached as **Exhibit 46** a true and correct copy of a Shutterstock document reflecting its metadata policies and procedures.


31. I have attached as **Exhibit 42** a true and correct copy of a Shutterstock document reflecting its curation policies and procedures.

32. I have attached as **Exhibit 32** the caption of Plaintiff's complaint, which was filed on February 2, 2022. The amended complaint was filed at Docket No. 17 on April 29, 2022.

33. I have attached as **Exhibit 39** a true and correct copy of relevant portions from the deposition transcript of Dr. Elliot McGucken.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Executed on February 17, 2023 in New York, New York.

By: 

Scott Alan Burroughs, Esq.
Declarant